

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

RECURSION SOFTWARE, INC.,

Plaintiff,

v.

DOUBLE-TAKE SOFTWARE, INC., F/K/A NSI
SOFTWARE, INC., AND NETWORK SPECIALISTS,
INC.,

Defendant.

Civil Action No. 4:10-cv-403

**DOUBLE-TAKE SOFTWARE, INC.’S ANSWER TO
PLAINTIFF’S ORIGINAL COMPLAINT AND JURY DEMAND**

For its Answer to Plaintiff’s Original Complaint and Jury Demand (the “Complaint”),
Double-Take Software, Inc. (“Double-Take”) answers as follows:

INTRODUCTION

1. Responding to the allegations in paragraph 1 of the Complaint, Double-Take admits only that Plaintiff Recursion Software, Inc. (“Recursion” or “Plaintiff”) alleges certain copyright and contract claims against Double-Take. Double-Take denies the remaining allegations in paragraph 1 of the Complaint.

PARTIES

2. Double-Take is without sufficient information to form a belief as to the truth of the allegations in paragraph 2 of the Complaint and therefore denies the allegations in that paragraph.

3. Responding to the allegations in paragraph 3 of the Complaint, Double-Take admits the allegations in that paragraph.

JURISDICTION AND VENUE

4. Responding to the allegations in paragraph 4 of the Complaint, Double-Take admits that Plaintiff's claims purport to arise under the Copyright Laws of the United States and that this Court has subject-matter jurisdiction over the matters alleged in the Complaint.

5. Responding to the allegations in paragraph 5 of the Complaint, Double-Take does not contest personal jurisdiction. The remaining allegations of paragraph 5 are denied.

6. Responding to the allegations in paragraph 6 of the Complaint, Double-Take does not contest venue. The remaining allegations of paragraph 6 are denied.

FACTUAL BACKGROUND

7. Responding to the allegations in paragraph 7 of the Complaint, Double-Take admits only that ObjectSpace, Inc.'s ("ObjectSpace") C++ Toolkits include a number of toolkits that assist software developers in developing new software programs. Double-Take is without sufficient information to form a belief as to the truth of the remaining allegations in paragraph 7 and therefore denies the remaining allegations in that paragraph.

8. Double-Take is without sufficient information to form a belief as to the truth of the allegations in paragraph 8 of the Complaint and therefore denies the allegations in that paragraph.

9. Double-Take is without sufficient information to form a belief as to the truth of the allegations in paragraph 9 of the Complaint and therefore denies the allegations in that paragraph.

10. Responding to the allegations in paragraph 10 of the Complaint, Double-Take, on information and belief and subject to further investigation, believes that it purchased one or more licenses from ObjectSpace for one or more versions of ObjectSpace's C++ Toolkit. Double-

Take is without sufficient information to form a belief as to the truth of the remaining allegations in paragraph 10 and therefore denies the remaining allegations in that paragraph.

11. Double-Take is without sufficient information to form a belief as to the truth of the allegations in paragraph 11 of the Complaint and therefore denies the allegations in that paragraph.

12. Responding to the allegations in paragraph 12 of the Complaint, Double-Take denies that it has refused to provide Recursion with sufficient information to determine which software license governs the ObjectSpace C++ Toolkits purchased by Double-Take. Double-Take is without sufficient information to form a belief as to the truth of the remaining allegations in paragraph 12 and therefore denies the remaining allegations in that paragraph.

13. Responding to the allegations of paragraph 13 of the Complaint, Exhibits C and D to the Complaint speak for themselves as to what language and information they contain. Double-Take is without sufficient information to form a belief as to the truth of the remaining allegations in paragraph 13 and therefore denies the remaining allegations in that paragraph.

14. Double-Take is without sufficient information to form a belief as to the truth of the allegations in paragraph 14 of the Complaint and therefore denies the allegations in that paragraph.

15. Responding to the allegations of paragraph 15 of the Complaint, Exhibits C and D speak for themselves as to what language and information they contain. Double-Take denies the remaining allegations of paragraph 15.

16. Double-Take denies the allegations in paragraph 16 of the Complaint.

17. Responding to the allegations in paragraph 17 of the Complaint, Double-Take, on information and belief and subject to further investigation, believes that it purchased one or more

licenses to ObjectSpace's C++ Toolkits. Double-Take is without sufficient information to form a belief as to the truth of the remaining allegations in paragraph 17 and therefore denies the remaining allegations in that paragraph.

18. Double-Take is without sufficient information to form a belief as to the truth of the allegations in paragraph 18 of the Complaint and therefore denies the allegations in that paragraph.

19. Double-Take is without sufficient information to form a belief as to the truth of the allegations in paragraph 19 of the Complaint and therefore denies the allegations in that paragraph.

20. Double-Take denies the allegations in paragraph 20 of the Complaint.

21. Responding to the allegations in paragraph 21 of the Complaint, Exhibit E speaks for itself as to what language and information it contains.

22. Responding to the allegations in paragraph 22 of the Complaint, Exhibit E speaks for itself as to what language and information it contains.

23. Responding to the allegations in paragraph 23 of the Complaint, Double-Take, on information and belief and subject to further investigation, believes that it has purchased one or more licenses to ObjectSpace's C++ Toolkits. Double-Take is without sufficient information to form a belief as to the truth of the remaining allegations in paragraph 23 and therefore denies the remaining allegations in that paragraph.

24. Responding to the allegations in paragraph 24 of the Complaint, Double-Take admits that on or about May 3, 2010, Rob Beeler had a phone conversation with Mike Eddings. Double-Take denies the remaining allegations in paragraph 24.

25. Responding to the allegations in paragraph 25 of the Complaint, Double-Take admits that Mr. Beeler and Mr. Eddings exchanged email communications, which speak for themselves. Additionally, Double-Take admits that Mr. Beeler and Mr. Eddings had communications over the telephone. Double-Take denies the remaining allegations in paragraph 25.

26. Double-Take denies the allegations in paragraph 26 of the Complaint.

27. Double-Take denies the allegations in paragraph 27 of the Complaint.

28. Double-Take denies the allegations in paragraph 28 of the Complaint.

29. Double-Take denies the allegations in paragraph 29 of the Complaint.

30. Double-Take denies the allegations in paragraph 30 of the Complaint.

31. Double-Take is without sufficient information to form a belief as to the truth of the allegations in paragraph 31 of the Complaint and therefore denies the allegations in that paragraph.

32. Double-Take is without sufficient information to form a belief as to the truth of the allegations in paragraph 32 of the Complaint and therefore denies the allegations in that paragraph.

33. Responding to the allegations in paragraph 33 of the Complaint, Double-Take incorporates its answers to paragraphs 1 through 32 of the Complaint, as set forth above.

34. Double-Take is without sufficient information to form a belief as to the truth of the allegations in paragraph 34 of the Complaint and therefore denies the allegations in that paragraph.

35. Double-Take denies the allegations in paragraph 35 of the Complaint.

36. Double-Take denies the allegations in paragraph 36 of the Complaint.

37. Double-Take denies the allegations in paragraph 37 of the Complaint.

38. Responding to the allegations in paragraph 38 of the Complaint, Double-Take incorporates its answers to paragraphs 1 through 37 of the Complaint, as set forth above.

39. Double-Take is without sufficient information to form a belief as to the truth of the allegations in paragraph 39 of the Complaint and therefore denies the allegations in that paragraph.

40. Double-Take is without sufficient information to form a belief as to the truth of the allegations in paragraph 40 of the Complaint and therefore denies the allegations in that paragraph.

41. Double-Take denies the allegations in paragraph 41 of the Complaint.

42. Double-Take denies the allegations in paragraph 42 of the Complaint.

43. Double-Take denies the allegations in paragraph 43 of the Complaint.

44. Double-Take denies the allegations in paragraph 44 of the Complaint.

CONDITIONS PRECEDENT

45. Double-Take is without sufficient information to form a belief as to the truth of the allegations in section VI of the Complaint, because Recursion has not adequately identified the particular license that governs Double-Take's use of ObjectSpace, Inc.'s C++ Toolkit.

Therefore, Double-Take denies the allegations in section VI of the Complaint.

JURY DEMAND

46. Double-Take requests a jury trial for all issues triable to the jury.

PRAYER

47. Double-Take denies that Recursion is entitled to any relief requested in the Complaints "Prayer."

AFFIRMATIVE DEFENSES

FIRST DEFENSE

48. Double-Take has not infringed any valid, enforceable copyright owned by Recursion.

SECOND DEFENSE

49. Double-Take has not breached any valid, enforceable contract between Double-Take and ObjectSpace or Recursion.

THIRD DEFENSE

50. Plaintiff's claims are barred by limitations.

FOURTH DEFENSE

51. Plaintiff's claims are barred by laches.

FIFTH DEFENSE

52. Plaintiff's claims are barred by estoppel.

SIXTH DEFENSE

53. Plaintiff's claims are barred by waiver.

SEVENTH DEFENSE

54. Plaintiff's claims are barred by license.

EIGHTH DEFENSE

55. Plaintiff's breach-of-contract claims are pre-empted by the Federal Copyright Act.

NINTH DEFENSE

56. Plaintiff lacks standing or capacity to sue.

OTHER DEFENSES

57. Double-Take reserves the right to assert additional affirmative defenses, after appropriate discovery.

PRAYER FOR RELIEF

Double-Take Software, Inc. respectfully requests that this Court:

- enter judgment in its favor, dismissing the Complaint with prejudice;
- award Double-Take its attorney's fees and costs under 17 U.S.C. § 505; and
- grant such other and further relief to which Double-Take may show itself justly entitled.

Dated: September 17, 2010

Respectfully submitted by:

/s/ Herbert J. Hammond

Herbert J. Hammond

Attorney-In-Charge

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ATTORNEYS FOR DEFENDANT

DOUBLE-TAKE SOFTWARE, INC.

Certificate of Service

The undersigned certifies that the foregoing document was filed electronically on the 17th day of September, 2010 in compliance with Local Rule CV-5(a) and has been served on all counsel who have consented to electronic service and all other counsel by regular mail.

/s/ Herbert J. Hammond
Herbert J. Hammond

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